IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.4740-M of 2007

Date of Decision: May 7, 2007

Chander Bhan ….Petitioner

Versus

State of Haryana and another ….Respondents

CORAM HON'BLE MR. JUSTICE S. D. ANAND

PRESENT: Mr.Sudhanshu Makkar, Advocate for the petitioner.

Mr.SS Mor, Senior Deputy Advocate General,Haryana

Mr.RS Dhull, Advocate for respondent No.2-complainant

JUDGMENT

Respondent-accused Krishan Kumar was concededly released on bail by the learned Trial Magistrate in terms of the provisions of Section 167(2) of the Code of Criminal Procedure on the premise that the challan had not been filed within the stipulated period of 90 days.

The petitioner-complainant has filed the present plea for cancellation of the bail on an averment that the calculation made by the learned Trial Magistrate for computing the period of 90 days was factually incorrect.

As per a categorical averment in the reply (filed by the respondent through SHO, Police Station Tosham), the challan against respondent-accused Krishan Kumar and two others (Hari Singh and Murti Devi) was filed before the Illaqa Magistrate on 14.6.2006. At that time, the plea raised by Krishan

Kumar about his being a juvenile delinquent was pending consideration with the Judicial Justice Board, Bhiwani. He was ultimately declared juvenile on 4.8.2006. After the determination of the status as juvenile delinquent, the challan against him was filed on 2.9.2006.

The proposition, as apparent from the material obtaining on the file, is very simple and as under.

If 14.6.2006 is taken as the date of presentation of challan, the concession of bail granted to respondent Krishan Kumar in terms of Section 167(2) of the Code of Criminal Procedure shall have to be cancelled. As against it, if 2.9.2006 is taken to be the date on which the challan came to be filed against respondent-Krishan Kumar before the Juvenile Justice Board, his release on bail in terms of the provisions of Section 167(3) of the Code of Criminal Procedure was rightly ordered. As per the material obtaining on the file, the challan against the respondent-accused and two others was filed in the Court of Illaqa Magistrate on 14.6.2006. Those challaned, obviously, included the respondent-accused as he had given his age at the time of arrest to be 19 years and the police, accepting that assertion to be correct, had considered him to be a non-juvenile delinquent and had filed the challan against him. It is thereafter that the respondent-accused Krishan Kumar filed an application for a declaration that he is a juvenile delinquent. That declaration came about on 4.8.2006. As the challan against the respondent-accused Krishan Kumar and two others had already been filed on 14.6.2006, it has to be assumed that the challan against the respondent-accused was filed on that date only and the period of 90 days has to be counted with effect from that date. Just because he applied thereafter for being declared as juvenile delinquent, that declaration came about on 4.8.2006 and the supplementary challan came to be filed against

him on 2.9.2006, would not justify the averment that the challan itself against him was filed on 2.9.2006. In fact, challan against the respondent-accused had already been filed on 14.6.2006 and the filing of a supplementary challan was occasioned on account of the finding, in the meantime, (after the filing of challan aforementioned) that he was a juvenile delinquent. The filing of supplementary challan cannot be used as an instrument to raise a plea that the challan against the respondent-accused would not be deemed to be filed on 14.6.2006.

In the light of foregoing discussion, It is obvious that the challan against the respondent-accused had, in fact, been filed on 14.6.2006 and the grant of bail to him by the learned Principal Magistrate, Juvenile Justice Board, Bhiwani in terms of Section 167(2) of the Code of Criminal Procedure was not legally appropriate. The petition shall stand allowed accordingly. The bail granted to respondent-Krishan Kumar in terms of the provisions of Section 167 (2) of the Code of Criminal Procedure shall stand cancelled.

Disposed of accordingly.

(S. D. ANAND)
JUDGE

May 7, 2007
SRM